IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

Crl.L.P..No. 640 of 2006()

CC.39/2005 of JUDICIAL FIRST CLASS MAGISTRATE COURT-II, (ADDITIONAL MUNSIFF), KASARAGOD

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PETITIONER/COMPLAINANT

K.RAMANKUTTY,
S/O.P.A.NAIR, KRISHNA KRIPA,
NEAR JAMALIYA SAW MILL,
BADIADKA ROAD, KUMBALA P.O.

BY ADV. SRI.K.I.MAYANKUTTY MATHER

RESPONDENTS:

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1. M.ABDULLA,
S/O.M.B.MAMMUNHI, SUHANA MANZIL,
MANNAMKUZHI, MANGALPADY, UPPALA P.O.,
KASARAGOD.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.M.SASINDRAN -R1
PUBLIC PROSECUTOR SRI. C.M.KAMMAPPU -R2

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 06/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 640 OF 2006

Dated this the 6th day of July, 2007

O R D E R

This petition for special leave to appeal is filed against the judgment in C.C. No.39 of 2005 on the file of the Judicial First Class Magistrate's Court II, (Additional Munsiff), Kasaragod.

2. The allegation in the complaint was that the first respondent-accused had borrowed from the petitioner - complainant an amount of Rs.1.20,000/- and issued Ext.P1 cheque in discharge of the said liability and that when the said cheque was presented to the bank for encashment, the same was dishonoured for want of sufficient funds in the account of the first respondent. It was further alleged that on getting the memo regarding the dishonour of the cheque, notice was issued to the accused and that inspite of receipt of notice, the amount covered by the cheque was not paid. Hence, the complaint was filed against the accused alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. To prove the case against the accused, the

complainant himself was examined as PW.1 and Exts.P1 to P5 were produced. On the side of the defence, the accused was examined as DW.1 and Exts.D1 to D8 were produced. On closing the evidence of the complainant, the accused was questioned under Section 313 Cr.P.C. The accused denied the allegations in the complaint and stated that he had not received any amount from the complainant as alleged . He further stated that the complainant was working as Manager -cum-Accountant in his business concern and that the complainant was entrusted with signed blank cheques for the day to day business transactions and that one of the cheques was misused by the complainant for filing the complaint. After considering the entire evidence, the trial court found that the complainant failed to prove the case against the accused and hence acquitted him.

3. Heard the learned counsel appearing for the petitioner, perused all the records produced before this Court and considered the judgment of the trial court. The trial court found that the petitioner was working as Manager -cum- Accountant in the business concern of the accused and that cheques were entrusted with the complainant for the day to day affairs of the company. The trial court also found that when two of the cheques were found missing, the accused had filed a complaint before the police and intimation was given to the bank to stop payment. Further, the trial

court found that as per Ext.D7 First Information Report, the case set up by the accused was proved and that Ext.P1 cheque was one of the cheques signed by the accused and misused by the complainant. The trial court considered the entire evidence and found that the complainant failed to prove that he had paid an amount of Rs.1,20,000/- to the accused as alleged in the complaint. In the facts and circumstances of the case, this Court is of the view that the finding entered by the trial court is based on evidence and hence, the impugned judgment requires no interference.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

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